

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|---------------------------|---|-----------------------------|
| VOITH PAPER GMBH & CO. KG | : | |
| | : | Civil Action No. 07-226-JJF |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| JOHNSONFOILS, INC. | : | |
| | : | |
| Defendant. | : | |

**DEFENDANT'S MOTION TO (I) SHORTEN BRIEFING PERIOD
AND (II) SET EXPEDITED HEARING ON DEFENDANT'S MOTION
TO EXTEND THE DISCOVERY PERIOD AND TO EXTEND THE
DURATION OF VOITH'S WITNESS DEPOSITIONS**

Defendant, JohnsonFoils, Inc. ("JohnsonFoils") hereby files this Motion to (I) Shorten Briefing Period and (II) Set Expedited Hearing (the "Motion to Shorten") on Defendant's Motion to Extend the Discovery Period and To Extend the Duration of Voith's Witness Depositions ("Motion to Extend"), and requests the Court require any response or opposition by Voith to the Motion to Extend be filed on or before April 18, 2008, and any reply in further support of the Motion to Extend be filed by JohnsonFoils no later than April 22, 2008, and further requests the Court schedule a hearing on the Motion to Extend at the Court's earliest convenience thereafter and prior to April 30, 2008, the date fact discovery in this matter is set to close. In support hereof, JohnsonFoils respectfully shows the Court the following:

1. Local Rule of Practice and Civil Procedure 7.1.2(b) of the United States District Court for the District of Delaware requires that "Unless otherwise ordered, once a motion has been deemed served, the response thereto shall be filed within 10

days, as calculated consistent with Fed. R. Civ. P. 6(a) and (e) and CM/ECF Procedures."

2. On August 3, 2007, the Court issued its Fed.R.Civ.P. 16(b) Scheduling Order (D.I. 17), setting the trial date for November 5, 2008, and ordering the parties to complete document production by February 15, 2008 and fact discovery by April 30, 2008.

3. As set forth in greater detail in the Motion to Extend, and opening brief filed in support of thereof, Voith has continually impeded JohnsonFoils efforts to conduct discovery in a timely manner. JohnsonFoils has good cause warranting a ninety (90) day extension of the discovery period due to: (1) Voith's unreasonable restrictions on its production of documents; (2) Voith's production of nearly 100,000 pages of documents (over 75% of Voith's total document production) on the eve of or after the February 15, 2008 deadline for production of documents; (3) the vast majority of documents that Voith produced on the eve of or after the February 15, 2008 document production deadline were foreign language documents that need to be translated; and (4) Voith's belated notification that only one (1) of the seven (7) inventors of the Patents-in-Suit is employed by Voith, and Voith's refusal to provide a last known address for the remaining six (6) inventors. Voith's discovery tactics are purposefully employed to impede JohnsonFoils' discovery progress and make compliance with the April 30, 2008 deadline an undue burden.

4. Pursuant to the Court's February 1, 2008 Standing Order Regarding Non-Case Dispositive Motions in Patent Cases (the "Standing Order"), all motions

are required to be noticed for the Court's scheduled "motion days". The next date and time available for motion hearing, as set by the Court, is May 9, 2008, which is after the Court's scheduled close of fact discovery in this matter.¹

5. It is imperative that JohnsonFoils obtain a hearing on the Motion to Extend as soon as possible given the April 30, 2008 close of fact discovery. As set forth in the Motion to Extend, good cause exists to extend the discovery period by ninety (90) days given the dilatory conduct by Voith. Absent the granting of the Motion to Shorten, JohnsonFoils runs the risk that it will be deprived of its rights to be heard on the issues raised in the Motion to Extend since the motion can not be presented prior to the April 30 fact discovery cut-off under the constraints set forth in the Standing Order and Local Rules.

6. Local Rule 7.1.1 Certification. In compliance with Local Rule of Practice and Civil Procedure 7.1.1 of the United States District Court for the District of Delaware, JohnsonFoils has made a reasonable effort to reach agreement with Voith on the matters set forth in this motion, but the parties have been unable to reach an agreement.

¹ JohnsonFoils acknowledges the Standing Order states the Court will not order expedited briefing on motions, and accordingly, has noticed a hearing on the Motion to Extend for May 9, 2008 per the Standing Order. However, given the exigent circumstances giving rise to the Motion to Extend, JohnsonFoils seeks relief from the Standing Order and requests a minimally shortened briefing schedule and expedited hearing on the Motion to Extend.

WHEREFORE, based upon the foregoing, JohnsonFoils respectfully requests that this Honorable Court enter an order shortening the briefing period for opposition to the Motion to Extend and schedule an expedited hearing on the Motion to Extend prior to the April 30, 2008 close of fact discovery. A proposed form of Order is attached.

Respectfully submitted,

Seitz, Van Ogtrop & Green, P.A.

/s/ Patricia P. McGonigle

Date: April 8, 2008

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*Attorneys for Defendant
JohnsonFoils, Inc.*

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| | : | |
| Defendant. | : | |

NOTICE OF MOTION

PLEASE TAKE NOTICE that Defendant, JohnsonFoils, Inc. ("JohnsonFoils"), will present its *Motion to (I) Shorten Briefing Period and (II) Set Expedited Hearing* (the "Motion to Shorten") on Defendant's *Motion to Extend the Discovery Period and to Extend the Duration of Voith's Witness Depositions* (the "Motion to Extend") to the Court at a time that is convenient to the Court.

PLEASE TAKE FURTHER NOTICE that Defendant is seeking an expedited hearing on the Motion to Shorten and Motion to Extend.

Seitz, Van Ogtrop & Green, P.A.

Date: April 8, 2008

/s/ Patricia P. McGonigle

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**ORDER GRANTING DEFENDANT'S MOTION TO (I) SHORTEN
BRIEFING PERIOD AND (II) SET EXPEDITED HEARING ON DEFENDANT'S
MOTION TO EXTEND THE DISCOVERY PERIOD AND TO EXTEND THE
DURATION OF VOITH'S WITNESS DEPOSITIONS**

Upon consideration of *Defendant's Motion to (I) Shorten the Briefing Period and (II) Set Expedited Hearing* (the "Motion to Shorten") *on Defendant's Motion to Extend the Discovery Period and to Extend the Duration of Voith's Witness Depositions* (the "Motion to Extend") and for good cause, it is hereby:

ORDERED that the Motion to Shorten is GRANTED; and it is further

ORDERED that any opposition to the Motion to Extend shall be filed and served on or before _____, 2008 at _____.m.; and it is further

ORDERED that any reply in further support of the Motion to Extend shall be filed and served on or before _____, 2008 at _____.m.; and it is further

ORDERED that a hearing on the Motion to Extend shall be held on _____, 2008 at _____.m.

Dated: April ___, 2008

U.S.D.J.

CERTIFICATE OF SERVICE

I, Patricia P. McGonigle, Esquire, hereby certify that on this 8th day of April 2008, I electronically filed the foregoing pleading with the Clerk of Court using CM/ECF which will send notification of such filing to counsel of record. Further, I caused a copy of the foregoing pleading to be served upon the following counsel of record in the manner so noted:

Via Hand Delivery

Adam W. Poff, Esquire
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Via Electronic Mail

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/s/ Patricia P. McGonigle

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